Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10-14-2008 has been entered.

2. Claims 1, 3, 5, 8, 10-16 and 39-40 are rejected under 35 U.S.C. 103(a) as obvious over EP (0630965) in view of Cummings (5,750,482).

3. EP '965 discloses a liquid hard surface cleaning composition comprising a sequestrant comprising a maleic acid-olefin copolymer in amounts from 0.02 to 1.0 (page 2, line 50-page 3, line11). EP '965 further includes 0.05 to about 10% by weight of detergent surfactants such as anionic, nonionic, and zwitterionic surfactants. The anionic surfactants include alkyl sulfates; sulfonates, alkoxylated sulfates and the zwitterionic surfactants include amidoalkylenesulfobetaine surfactants (pages 4-5). EP '965 further includes a buffering system comprising alkanolamines in amount from 0 to 5% by weight (page 6, lines 50-55). Moreover, the solvents of EP '965 include up to 50% by weight of glycol ethers and ethoxy alkanols (page 8, lines 39-68). See examples A-D.

4. EP '965 is silent with respect to EO/PO component.

5. Cummings discloses a non-streaking glass cleaning composition comprising a co-solvent in an amount from 0 to 10% by weight and comprises a glycol ether (col. 4,

lines 15-51); 0.001 to 2% by weight of a anionic, nonionic, cationic and zwitterionic surfactant (col. 5, lines 7-64); and 0.02 to 2.0% by weight of a builder component such as a polyacrylic resin (col. 7, lines 29-35). See examples S, U and Y. Specifically, Cummings teaches that nonionic surfactants include pluronics such as ethoxylated propoxylated surfactants (col. 5, lines 55-59).

6. It would have been obvious to one of ordinary skill in the art to include the EO/PO nonionic surfactant of Cummings to the compositions of EP '965 because EP '965 teach and require the use of nonionic surfactants in hard surface cleaning compositions to aid in cleaning would have been obvious to one of ordinary skill in the art in the absence of unexpected results because EP '965 teach and require nonionic surfactants and the inclusion of EO/PO would have been added for its intended purpose.

Response to Arguments

Applicant argues that the artisan of ordinary skill would have no reason to modify Underwood to select a pluronic series from Cummings.

The examiner contends that Underwood discloses the use of nonionic surfactants such as alkoxylated alcohols and therefore it would have been obvious to the skilled artisan to include additional surfactants or substitute surfactants because of synergism.

An obviousness determination is not the result of a rigid formula disassociated from the consideration of the facts of a case. Indeed, the common sense of those skilled in the art demonstrates why some combinations would have been obvious where others would not. See KSR Int'l Co. v. Teleflex Inc., 550 U.S. __, 2007 WL 1237837, at *12 (2007) ("The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.").

Applicant references Table 3, compositions A-D as evidence showing unexpected results, however, the criticality cannot be established because applicant's examples in Table 3 are not commensurate in scope with the claimed invention. For example, the compositions in Table 3 require very specific ingredients such as Acusol, monoethanolamine, and sodium lauryl sulfate and the claims are drawn to broad ingredients such as anionic surfactants, amines etc. Accordingly, since the claims are not commensurate with the showing of Table 3, criticality cannot be established.

With respect to new claim 40, the examiner contends that the range or proportions of ingredients is suggested by the prior art of record and further the ingredients have been called out by Underwood and Cummings. Accordingly, the claims are considered obvious as suggested above.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Necholus Ogden, Jr. whose telephone number is 571-272-1322. The examiner can normally be reached on M-Thu.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Necholus Ogden, Jr./
Primary Examiner
Art Unit 1796

10-27-2008